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June 20, 2012

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Notification of Ex Parte Presentations of Anda, Inc., Regarding Petition for Declaratory Ruling to Clarify That 47 U.S.C. § 227(b) Was Not the Statutory Basis for Commission's Rule Requiring an Opt-Out Notice for Fax Advertisements Sent with Recipient's Prior Express Consent, CG Docket No. 05-338 (filed Nov. 30, 2010)

Dear Ms. Dortch:

On June 19, 2012, the undersigned and Matthew Murchison, both of Latham & Watkins LLP, met on behalf of Anda, Inc. ("Anda"), with Christine Kurth, Legal Advisor to Commissioner McDowell, in connection with Anda's Petition for Declaratory Ruling and Application for Review in the above-mentioned docket. On June 20, 2012, the undersigned and Mr. Murchison met with Matthew Berry and Nicholas Degani of the Office of Commissioner Pai regarding the same matter.

At these meetings, we discussed the uncertain legal basis for Section 64.1200(a)(3)(iv) of the Commission's rules, which requires that commercial faxes sent with the prior express consent of the recipient must contain the same opt-out notice that appears on unsolicited fax advertisements. We noted that Anda had filed a Petition for Declaratory Ruling 19 months ago asking the Commission to identify the rule's statutory basis, but that the Commission's Consumer and Governmental Affairs Bureau recently issued an Order summarily dismissing the Petition.¹ We pointed out that the Bureau did so without seeking public comment, without resolving the substantive issues raised in the Petition, and in a manner that prevents Anda from seeking judicial review.

¹ See *Junk Fax Prevention Act; Petition for Declaratory Ruling to Clarify That 47 U.S.C. § 227(b) Was Not the Statutory Basis for Commission's Rule Requiring an Opt-Out Notice for Fax Advertisements Sent with Recipient's Prior Express Consent*, CG Docket No. 05-338, Order, DA 12-697 (CGB rel. May 2, 2012).

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We urged the Commission to act quickly on Anda's pending Application for Review of that Order, and to clarify that Section 227(b) of the Communications Act, which governs only unsolicited faxes, was not the statutory basis for the rule in question. We explained that if the Commission does not clarify that Section 64.1200(a)(3)(iv) was adopted pursuant to authority other than Section 227(b), class action lawsuits alleging technical violations of that provision will continue to threaten legitimate businesses with massive unwarranted liability based solely on consensual communications with their customers. By jeopardizing Anda's continued viability (not to mention the viability of other senders of solicited, business-to-business fax communications facing similar litigation risks), these lawsuits also endanger the tens of thousands of pharmacies—many of which cannot afford to keep significant amounts of generic pharmaceuticals in stock—that rely on Anda to fill orders of any size on short notice.

Anda also notes, in response to a question from Mr. Degani, that the default period for filing an opposition to the Application for Review has long passed. Section 1.115(d) of the Commission's rules provides that any opposition "shall be filed within 15 days after the application for review is filed." 47 C.F.R. § 1.115(d). As a result, any opposition to the pending Application for Review would have been due on May 29, 2012. No party has filed an opposition, and so the Application for Review is ripe for resolution by the full Commission.

Please contact the undersigned if you have any questions regarding these issues.

Sincerely,

/s/ Matthew A. Brill

Matthew A. Brill
Counsel for Anda, Inc.

cc: Christine Kurth
Matthew Berry
Nicholas Degani
(all via e-mail)